

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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JUL 10 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.622(b)	)	
Table of Allotments,	)	MM Docket No. 02-92
Digital Television Broadcast Stations	)	RM-10363
(Albany, New York)	)	

**REPLY COMMENTS OF UNITED COMMUNICATIONS CORPORATION**

United Communications Corporation ("United"), licensee of television broadcast station WWNV-TV, Carthage, New York, by its counsel, hereby replies to the comments filed by Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") regarding Clear Channel's proposal to substitute DTV Channel 7 for the current DTV assignment of Channel 4 to station WXXA-TV at Albany, New York. This change was originally proposed in a *Petition for Rulemaking* submitted on October 22, 1999 (the "1999 *Petition*").

**Background**

By letter dated August 28, 2001 (the "*Dismissal*"), the Television Branch dismissed the *Petition* due to interference to WWNV-TV. With a *Petition for Reconsideration* dated September 27, 2001, Clear Channel amended the 1999 *Petition* to specify a very slight change in the proposed transmitter location of WXXA-TV and an increase in tower height, while maintaining the same effective radiated power as originally proposed.<sup>1</sup> thereby purport-

<sup>1</sup> Technical Exhibit Prepared in Support of an Amendment to *Petition for Rulemaking to Modify the DTV Allotment Table - Station WXXA-TV, Albany, New York*, filed September 27, 2001 ("the 2001 Amendment") at 2. In United's Comments, the change was described as a reduction in the proposed operating power of WXXA-TV. While this represents a logical assumption as to how interference might be reduced, it is not what Clear Channel has proposed.

ing to limit all objectionable interference to WWNY-TV to just under the two percent threshold for consideration under Section 73.623(c)(2).

The interference analysis that accompanied the 1999 Petition used the 2 km nominal grid size resolution as appropriate following the procedures specified in OET Bulletin 69, pursuant to Section 73.623(c)(2) of the Rules. However, in the 2001 Amendment Clear Channel used a 1 km nominal grid size resolution for its analysis of predicted interference to WWNY-TV.

**I. Clear Channel's Interference Showing is Manipulative and Misleading.**

Clear Channel, in its comments in this proceeding, asserts that "WXXA-TV's proposed channel change will not result in any unacceptable interference to any other authorized DTV broadcast station, DTV allotment or analog television station pursuant to Section 73.623(c)(2) of the Commission's rules." This statement is specious.

The 2001 Amendment, represents an attempt to manipulate the methodology artificially so as to obtain a result more to its liking than the 2 km cell size that is employed in a standard OET 69 analysis. Only by resorting to a 1 km cell size can Clear Channel claim to reduce the predicted objectionable interference to slightly less than 2% of the population served by WWNY-TV. Unfortunately, Clear Channel has not demonstrated that the 2% limit was based on calculations using 1 km cells. The results obtained by utilizing a 1 km cell size

are questionable, particularly when considered in light of the other accuracy limitations associated with an interference evaluation under OET Bulletin 69.

The accuracy of an OET 69 analysis is affected by the inherent accuracy limitations of the underlying Longley-Rice propagation model, errors associated with utilizing interpolated values from a digital terrain data base at 1 kilometer intervals to evaluate terrain shielding effects, and the inability to replicate the vertical radiation pattern of each station considered in such an analysis accurately. In light of these inherent limitations, the FCC elected to establish a 2 km cell size as an appropriate standard for such an analysis, apparently in an effort to establish a fairly uniform frame of reference throughout the entire process. By calling for use of a 2 km cell size, the Commission sought to ensure that, if any errors occurred, they would not have the effect of approving a facility that would, in actual practice, cause interference to any station in excess of that predicted utilizing this methodology.

Both OET Bulletin 69 and the FCC's August 10, 1998 Public Notice entitled "Additional Application Processing Guidelines for Digital Television (DTV)" do mention the possibility of employing a smaller cell size in an OET 69 analysis. However, OET Bulletin 69 specifically states that "[e]valuations using cells smaller than 2 km on a side are also expected to be consistent with the evaluations given in Appendix B of the *Sixth Report and Order*." Based on this statement, it is clear that the FCC did not envision that parties would be

allowed to use smaller cell sizes in situations such as this as a means to bring an otherwise defective proposal into compliance with the 2% interference limit.

In that light, it is apparent that the interference analysis that accompanied the 2001 Amendment was misleading. The impression given by the 2001 Amendment is that a change in the location of WXXA-DT reduced objectionable interference to WWNY-TV to just under the 2% limit, when in reality the change in cell size is the operative factor. Clear Channel has not submitted any precedent for use of a 1 km cell size where the applicable interference standard could not be met with the standard 2 km cell size.

In summary, Clear Channel's 1 km cell size represents a distortion of the OET 69 methodology in order to achieve an improper result. There is no valid engineering basis for altering the analysis in this manner.

## **II. Clear Channel's Comments Fail to Demonstrate a Valid Benefit to the Public From its Proposal.**

The objectionable interference that will be caused by WXXA-DT to reception of WWNY-TV is a high price to pay. Clear Channel has not shown any countervailing public interest benefit that would justify the requested change to the table of allotments. WXXA-DT can cover its service area with an adequate signal on Channel 4. A change to Channel 7 will produce no benefit to the public, yet it will deprive many people who have relied on WWNY-TV for decades of this valuable service. See Exhibit A.

. The principle that deprivation or degradation of service is prima facie contrary to the public interest is “basic to the Commission’s task.” Historically, such losses may be justified only by sufficient offsetting public interest factors. Even an excess of total service gain over total service loss does not constitute a countervailing circumstance adequate to offset such deprivation or degradation. *Television Corporation of Michigan v. FCC*, 294 F2d 730 (DC Cir 1956); *Hall v. FCC*, 237 F2d 567 (DC Cir 1956); *Central Coast Television (KCOY-TV)*, 16 FCC 2d 506 (Rev. Bd. 1969).

Clear Channel has posited no such offsetting public interest.

In *Carolina Broadcasting*, the Commission concluded that

“A grant...would result in a substantial area in which service from station WSOC-TV would be lost. Such losses are prima facie inconsistent with the public interest, *Hall v. Federal Communications Commission*, 237 F. 2d 567, 14 R.R. 2009 (D.C. Cir. 1956). In view of the short spacing and the loss of service, a strong showing of other offsetting public interest considerations must be made. Yet Carolina is silent as to the loss area and has made no showing that there is a need for the new service in the gain area. Moreover, in view of the multiplicity of television signals throughout the gain area, we cannot assume that such a need exists. It is clear, therefore, that the allegation that new areas will fall within station WSOC-TV's service contours is totally insufficient to establish that a waiver of our spacing require-

ments would serve the public interest. CAROLINA BROADCASTING CO., 16 RR 2d 801, 18 FCC 2d 482, (1969).

The balancing process in which the Commission must engage in order to determine whether the projected loss of service will be outweighed by other factors, involves more than a mere comparison of numbers. West Michigan Telecasters, Inc., 22 FCC 2d 943, recon. denied, 26 FCC 2d 668 (1970), aff'd, 460 F.2d 883 (D.C. Cir. 1972). Coronado Communications, 8 FCC Rcd 159 (VSD 1992).

Here, the proposed change would cause objectionable interference undermining the FCC's highest priorities. Clear Channel, by contrast, has supported its proposal only by a mere allusion to a threat purportedly posed by the use of Channel 4 by videocassette recorders. This falls far short of justifying a substitution of DTV channel 7 for DTV channel 4 at Albany. Clear Channel's proposed amendment to the Table of Allotments would cause injury than benefit to the public interest. Accordingly, the Commission should reject the proposed change and leave the Table of Allotments with an allotment of DTV Channel 4 to Albany.

Respectfully submitted,

**UNITED COMMUNICATIONS  
CORPORATION**

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Its counsel

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# WWNY-TV(CP)

Predicted Coverage  
and Interference  
BPCT19890619KF  
Latitude: 43-57-16 N  
Longitude: 075-43-45 W  
Power: 316.00 kW  
Channel: 07-



77.0 dBu



71.0 - 77.0



56.0 - 71.0



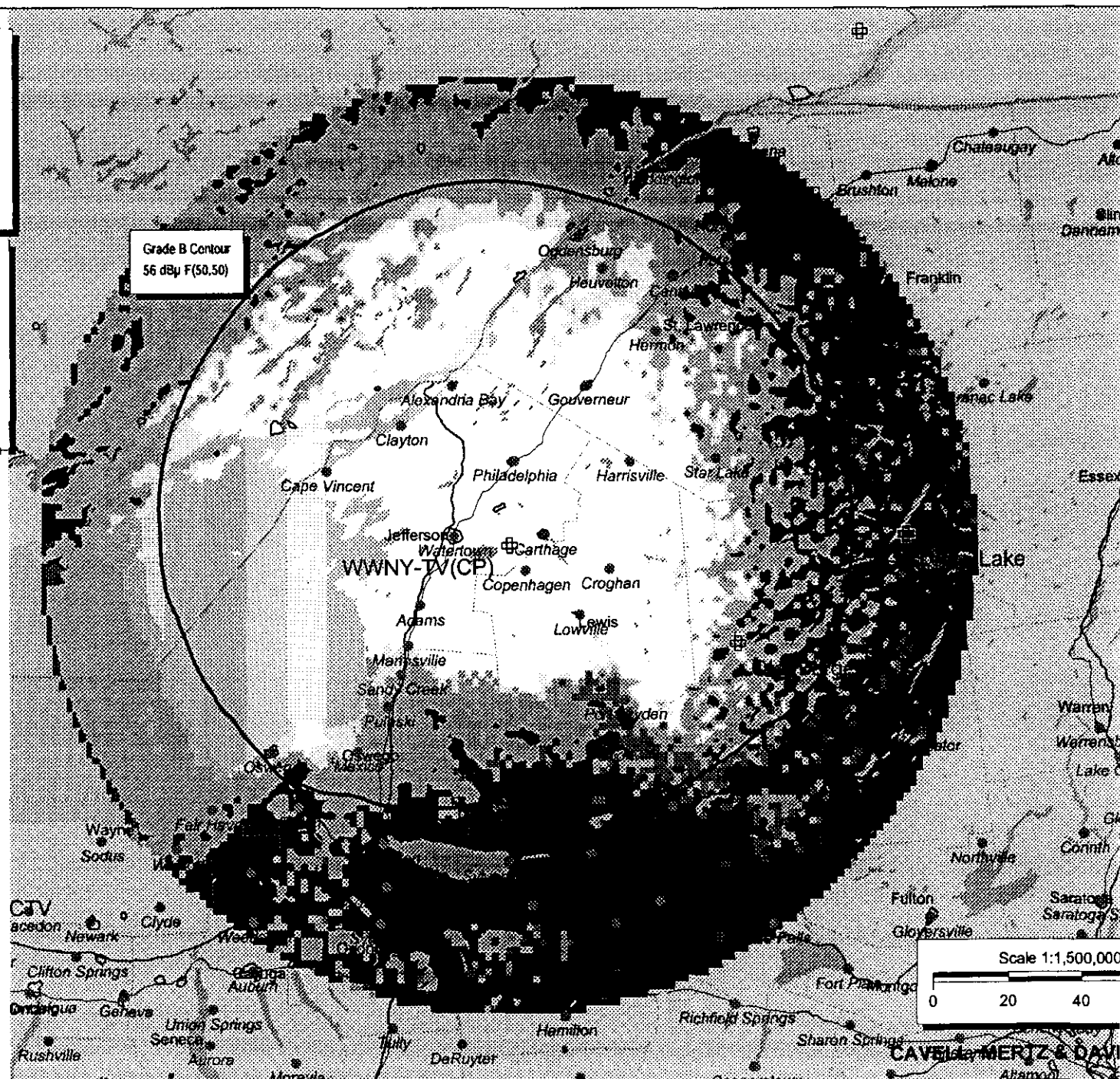
-599.0 - 56.0

Other TV Interferen

WXXADT 7 Interferen

Grade B Contour  
56 dBu F(50.50)

EXHIBIT A



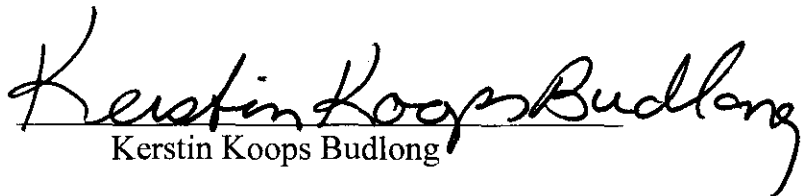


**CERTIFICATE OF SERVICE**

I, Kerstin Koops Budlong, hereby certify that on this date I caused the foregoing "Reply Comments of United Communications Corporation" to be served by first class mail on the following:

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